

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 08-13555-scc

4 Adv. Case No. 10-03547-scc

5 - - - - - x

6 In re

7 LEHMAN BROTHERS HOLDINGS, INC.,

8 Debtors.

9 - - - - - x

10 LEHMAN BROTHERS HOLDINGS INC., ET AL

11 Plaintiff,

12 v.

13 BANK OF AMERICA NATIONAL ASSOCIATION, ET AL

14 Defendants.

15 - - - - - x

16

17 U.S. Bankruptcy Court

18 One Bowling Green

19 New York, NY 10004

20 April 29, 2016

21 2:06 PM - 3:27 PM

22

23 B E F O R E :

24 HON SHELLEY C. CHAPMAN

25 U.S. BANKRUPTCY JUDGE

1 HEARING re: Conference re Proof of Claim Nos. 21217, 21140,
2 20421, 21146

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4 HEARING re: Conference (Adversary Proceeding 10-03547)

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25 Transcribed by: Sonya Ledanski Hyde

1 A P P E A R A N C E S :

2

3 JONES DAY

4 Attorneys for Lehman Brothers Holdings, Inc.

5 222 East 41st Street

6 New York, NY 10017

7

8 BY: RYAN J. ANDREOLI

9 LAURI W. SAWYER

10

11 HOGAN LOVELLS

12 875 Third Avenue

13 New York, NY 10022

14

15 BY: DENNIS H. TRACEY, III

16 BEN LEWIS

17 JOHN D. BECK

18

19 ALSO PRESENT TELEPHONICALLY:

20 IAN BURKE

21 JOHN DZIADZIO

22 MARTHA SOLINGER

23

24

25

1 P R O C E E D I N G S

2 THE COURT: How's everyone's day, other than being
3 entirely unhappy at being back down here?

4 MAN: (indiscernible) that.

5 THE COURT: I am at a loss to figure out what's
6 happening. The letters read like two people who have
7 watched a different movie. So what can we do to bring this
8 to a conclusion?

9 MS. SAWYER: I mean, I think that we're, you know,
10 concerned about what little progress we made from the last
11 conference and how to kind of get us moving forward.

12 THE COURT: See, that's the problem, though, Ms.
13 Sawyer, because I read your letter and I think, "Oh my
14 goodness," but then I read Mr. Tracey's letter, and based on
15 his view, there's virtually nothing to talk about. So we're
16 going to have to again just go through the items one by one.
17 And the problem that I have that I'm going to have to rely
18 on you for.

19 And part of the reason I'm going to do this on the
20 record today is that it's virtually impossible for me to
21 keep detailed track of what the agreements are. I can't
22 kind of be the enforcer in that regard. So I'm just trying
23 to referee fairly, right? But we really do need to be done.
24 So why don't we just start and just go through each item?
25 You have your teams here, and let's just try to get through

1 it.

2 MS. SAWYER: Before we do that, though, I think --

3 THE COURT: Sure.

4 MS. SAWYER: -- just you know, setting the stage a
5 little bit is we fundamentally feel like unless we are on
6 the eve of a court hearing, we're not making progress. And
7 so, you know, we spent time during the three weeks following
8 up and sending letters. And then, you know, at noon,
9 yesterday, we got a letter that was very different than the
10 letter that was sent to Your Honor at nine o'clock.

11 And so, it's a frustrating situation for us to be
12 in, where you know, on the B quotes issue, when we talked
13 about that, I mean, they told us, "Just talk about -- just
14 look at the search terms and give us comments."

15 I mean, that's very different than Mr. Tracey's
16 letter he sent nine hours later to the Court. And so, we
17 feel like unless we're on the verge of coming to Court and
18 we had a meet and confer this morning, trying to talk about
19 things, that we're not moving forward.

20 And so, you know, I appreciate Your Honor's time,
21 and I think it's frankly very important for us to have it,
22 because otherwise, we're not moving forward, is our view.
23 And so, then you know, there's a flurry of activity in the
24 24 hours before we come here. Lots of promises are made.
25 And we feel were going to go away. And time will lag again.

1 So that's just setting the stage.

2 THE COURT: Okay.

3 MS. SAWYER: We can go through the specific
4 issues.

5 THE COURT: All right. So what we'll do is, I'll
6 let you respond, Mr. Tracey. We'll go through -- after Mr.
7 Tracey kind of gives his opening statement, we'll go through
8 the documents.

9 I do -- I know we spent three hours last time, I
10 hope we don't have to do that again. At three o'clock, I
11 have a conference call in another Lehman matter that
12 involves a cast of hundreds, so I'm going to have to take a
13 break at three o'clock no matter what. If we can conclude
14 by then, great. If not, I'll have to go do that for about
15 15 minutes and then we'll have to come back. All right? Go
16 ahead.

17 MR. TRACEY: I certainly hope that we can conclude
18 by then, because if we can't, that means I'm all wrong about
19 the way I do things. So just the basic point is that we've
20 been working since the last time we saw you, but it's only
21 two weeks, and we're talking about 250 gigabytes of
22 information.

23 It takes a huge amount of time to gather the
24 information, to upload it into machines. The machines go
25 all night, and then you're basically saying, "You can't do

1 anything until the machine stops working." It's taken close
2 to a week to ingest all that information.

3 So we aren't working. And we believe that we are
4 going to be basically done with every single one of the
5 deliverables, with one or two exceptions, by Monday or
6 Tuesday of next week. And I don't think we have any
7 disagreements, except on B quotes, where I think we lack a
8 common understanding of what's in the database, and that's
9 really what's dividing us. But we don't disagree --

10 THE COURT: Okay.

11 MR. TRACEY: -- on what the agreements were or
12 what we have to do.

13 THE COURT: Okay.

14 MR. TRACEY: So --

15 THE COURT: All right, so then let's roll through
16 the items and I think the best way to do it is to start with
17 Ms. Sawyer's -- well, I'll ask you. Because there's a
18 difference between your April 28th letter to me and your
19 April 26th letter to Mr. Tracey.

20 MS. SAWYER: I think the -- my suggestion would be
21 to discuss the April 28th letter to the Court.

22 THE COURT: Okay.

23 MS. SAWYER: But again, I don't think we need to
24 go through all the issues on my April 26th letter to Mr.
25 Tracey. I think that there's a few issues I'd want to talk

1 about.

2 THE COURT: Okay.

3 MS. SAWYER: But we don't need to go through them
4 all, so I think that might be the most efficient way
5 forward.

6 THE COURT: Okay. All right. So the first one is
7 the B quotes.

8 MS. SAWYER: So at the last conference, our
9 understanding was, is that QVT was either going to provide
10 us with all the quotes in the B quotes database for
11 September 1st to September 19th, 2008, or, if they were
12 unable to technically figure out how to do that, they were
13 just going to turn over the database to us because it didn't
14 -- doesn't contain any confidential information.

15 They advised us, last week, that it was a sequel
16 database, SQL, which means that the information isn't just
17 an email that can be searched with a -- with search terms.
18 It's actually a database that contain -- it gets the emails
19 and then it extracts information, so extracts the ticker and
20 it extracts the time, it extracts the date, it extracts the
21 quote.

22 And it creates a database of that information.
23 And then, it may attach the actual email that it extracted
24 the information from. And so, it's a database. And so, we
25 said, "Once you told us it's a sequel database," your

1 suggestion to run search terms through it isn't going to get
2 us what we need, it's going to get us, you know, the
3 tickers, but it's not going to get the rest of the stuff
4 related to the tickers in the database.

5 It's a -- it's SQL means Specific Queried
6 Language. It needs to be queried. It's a database. So
7 they proposed search terms. We wrote to them and said,
8 "Search terms aren't going to work. You need to just give
9 us the database. We need to query it. And so, we spoke
10 about it this morning.

11 THE COURT: I don't understand.

12 MS. SAWYER: Okay.

13 THE COURT: Why can't you search? Give me an
14 example of what would happen if you search the database.

15 MS. SAWYER: If you ran the -- a ticker through
16 the database.

17 THE COURT: A ticker, right.

18 MS. SAWYER: And all you would get was that
19 ticker, you wouldn't get the quotes related to that ticker.
20 It's not going to connect up. It's not like you're going to
21 get an email that has all the information in it. You're
22 just going to get the ticker. You're just going to get the
23 -- what you searched for.

24 THE COURT: So it's not going to -- so if I think
25 of it in my simple way as a huge digital Excel spreadsheet -

1 -

2 MS. SAWYER: Absolutely.

3 THE COURT: It's going to give you a field --

4 MS. SAWYER: It's going to give you a field.

5 THE COURT: -- and not a line?

6 MS. SAWYER: Exactly. It's not going to connect.

7 It's a relational database, so you have to connect it. So
8 you have to ask it a question. And you can say, "Give me
9 all the quotes related to this ticker." And it can --
10 depending on how it's setup, you know, it can't say exactly
11 what the question is. But you pose a question to it, it
12 gives you the information. So we know how to use an SQL
13 database --

14 THE COURT: Okay.

15 MS. SAWYER: -- to ask the information. And so,
16 we --

17 THE COURT: Okay.

18 MS. SAWYER: -- ask for it to be produced. So we
19 spoke about it this morning with Mr. Tracey, and he said,
20 you know, "I just don't know enough technically about the
21 database. I need to look into it. And maybe you need to
22 talk to our tech people and try to figure it out."

23 That's all fine, but that's -- I mean, three weeks
24 have happened, and we haven't had that conversation. You
25 know, we're still kind of -- until this morning, until the

1 eve of coming to see the Court, we literally --

2 THE COURT: So, when Mr. Tracey says in his
3 letter, which is at the top of Page Two, "Because Lehman is
4 refusing to comment on our proposed search terms, we plan to
5 ask our bender to run the relevant ticker symbols, and will
6 produce all non-responsive records. This will collect all
7 quotes for all relevant positions in the requested period,"
8 you say, "That's incorrect."

9 MS. SAWYER: Well, what -- agreed.

10 THE COURT: As a matter of the way it will work?

11 MS. SAWYER: Agreed. What their vendor has
12 proposed is they take this massive Excel spreadsheet and --

13 THE COURT: Right.

14 MS. SAWYER: -- they'll convert it into some sort
15 of text format, and they'll try to connect everything up.
16 And then, they'll run searches through that, which we've had
17 problems with QVT's vendor before. I honestly don't have
18 any confidence that that process is going to work because
19 that's not the way the database is designed. You're trying
20 to like, force it into a search term process, when it's
21 setup to be handled differently.

22 THE COURT: Okay. So this is not a philosophical
23 difference, this is a technical problem?

24 MR. TRACEY: Right. If the way it works is the
25 way Ms. Washington -- Ms. Sawyer, sorry --

1 MS. SAWYER: Ms. Sawyer.

2 MR. TRACEY: -- works -- I'd be perfectly happy to
3 provide a database, and actually, it would be much easier
4 for us if it's easier for them.

5 THE COURT: Yes.

6 MR. TRACEY: So I agree. But the problem is, when
7 we started this process --

8 THE COURT: Yeah.

9 MR. TRACEY: -- the idea was to run search terms
10 on it, so that's the path we went down.

11 THE COURT: Right.

12 MR. TRACEY: And we've spent the last two weeks
13 designing search terms and trying to get them to respond and
14 they haven't responded. So we did waste some time on that
15 process.

16 THE COURT: Okay. But I think -- but --

17 MR. TRACEY: Let me just finish.

18 THE COURT: Okay.

19 MR. TRACEY: The reason that we continued to
20 (indiscernible) that is a path to follow is as follows. And
21 again, this is not a philosophical difference, it's a fact
22 question. What -- and I just confirmed this with my IT
23 person today at QVT.

24 What he says is that the database has essentially
25 two elements. It has the big Excel spreadsheet that Ms.

1 Sawyer mentioned, and it has all of the underlying Bloomberg
2 messages.

3 THE COURT: Right, right.

4 MR. TRACEY: You know, in that database.

5 THE COURT: Okay, okay.

6 MR. TRACEY: So it -- so that's every email, every
7 Bloomberg message just --

8 THE COURT: Okay.

9 MR. TRACEY: -- that any one of our people who
10 were using this system sent overseeing for --

11 THE COURT: Okay.

12 MR. TRACEY: -- a 72 day period. It's 125,000
13 emails, so -- for Bloomberg. So those -- and those are
14 going to delay in very small part, to these tickers, and in
15 very large part, to the rest of their business. So --

16 THE COURT: So can you search the -- can you
17 search the --

18 MR. TRACEY: (indiscernible). No, let me --

19 THE COURT: No, no, no, hold on. But what Mr.
20 Tracey is saying, they're Bloomberg messages, right?

21 MR. TRACEY: Yes, right.

22 THE COURT: So they are quotes.

23 MR. TRACEY: There are quotes in the Bloomberg
24 messages --

25 THE COURT: Right.

1 MR. TRACEY: -- and there's also a lots of other
2 things in Bloomberg.

3 THE COURT: Sure.

4 MR. TRACEY: And so, what our -- so what -- we
5 can't just turn it over to them because then we're giving
6 them 125,000 Bloomberg messages, which most of which don't
7 relate to this case. And I would have to review or have a
8 team review every single one of them, so what I'd like --

9 THE COURT: But why can't you search -- so it --

10 MR. TRACEY: I can. I -- what I can do, and my
11 vendors told me that they can do this, and of course, we
12 don't know until they finish, but what they say is that you
13 can take all of those quotes, push a button -- they've
14 already done it, they said. Push a button and they turn
15 (indiscernible) to text. And then you search them through
16 the ticker.

17 THE COURT: So there's two -- so what you just
18 said, Ms. Sawyer, was there's the database and then there's
19 the body of Bloomberg messages that were the data from which
20 was extracted to create the database. So forget the
21 database. You can't search that.

22 What Mr. Tracey is saying, "Okay, we're going to
23 go back into the documents that created the database, the
24 Bloomberg messages, and we're going to search those for the
25 tickers, and that will spit out the messages that contain

1 the quotes, corresponding to those tickers," which sounds
2 like it's exactly what you want.

3 MR. TRACEY: The only -- and let me just finish.
4 The only limitation, and it's probably -- and it's one that
5 they mentioned this morning is, whenever you convert
6 something, of course, it's not always perfect. So I don't -
7 - like, when you convert a PDF --

8 THE COURT: To a Word document.

9 MR. TRACEY: -- to a Word, it's never perfect.

10 THE COURT: Right.

11 MR. TRACEY: So I think they're concerned about
12 the conversion process. I can't tell you how reliable or
13 unreliable it is. Our vendor says it's reliable. But
14 that's an unknown and that's a downside of this process.
15 But I can't think of any other way to do this.

16 THE COURT: But let me play devil's advocate.
17 Since Ms. Sawyer has offered last time, and again, seems to
18 be offering this time, "Just give us the database, we'll
19 take it from there," and there, and there's a protective
20 order in place, so that -- and we're looking at historical
21 data, right?

22 I mean, by definition, we're -- you're looking at
23 very, very historical data. Then, why not, you know, say
24 King's X, give her the database and say, "Have a good time"?

25 MR. TRACEY: That, I mean, why don't we just give

1 them all of the emails for every one of our employees? That
2 would be much easier. We're not going to do that, because
3 90 percent of them are irrelevant and they're not entitled
4 to see them. They relate to other business. And our
5 clients would not be comfortable --

6 THE COURT: I hear you. I understand. I was
7 merely focusing on the burden aspect of it.

8 MR. TRACEY: The burden is a problem.

9 MS. SAWYER: I mean, I think Mr. Tracey, though,
10 said his IT person told him it was two separate things. It
11 was a database with all of the information extracted, and it
12 was a set of messages. So I don't know why we can't get the
13 database because the information we need to get out of the
14 database is how many quotes QVT got for certain names on
15 certain days to discuss things like whether it was --
16 whether their market quotations process reasonably should've
17 failed. And also, to assess some of their loss
18 calculations, which they claim to be based upon broker runs
19 and things like that, to know what other information QVT had
20 in its possession.

21 And so, having him -- having them go through, when
22 we've had lots of problems in this case, and review a bunch
23 of messages and produce what's responsive versus a database
24 that can be queried and ask that question and say, QVT had
25 17 quotes for this name, they were received at this time.

1 It would be a very, I think --

2 MR. TRACEY: If I can do that, I will do it. I --
3 my vendor tells me, "You can't do that," but I would like to
4 put their -- them in touch with my vendor --

5 THE COURT: Yes.

6 MR. TRACEY: And they can ask all the questions
7 they want. And if that can be done, that would be ideal.
8 Because then I don't have to do anything.

9 THE COURT: Right.

10 MR. TRACEY: And they get everything
11 (indiscernible).

12 THE COURT: Then you don't have to convert and
13 search and review and --

14 MR. TRACEY: That'd be great.

15 THE COURT: -- if you can ask the database that
16 question --

17 MR. TRACEY: That'd be great.

18 THE COURT: Perfect, okay.

19 MR. TRACEY: So we'll just put them in touch with
20 our IT people and they can ask all the questions they want.

21 MS. SAWYER: (indiscernible) QVT IT person, then -
22 -

23 MR. TRACEY: Then (indiscernible).

24 THE COURT: Okay, that's perfect, great.

25 MS. SAWYER: Thank you.

1 THE COURT: So I think the next issue is Duff &
2 Phelps issue, which Mr. Andreoli was going to talk about.

3 MR. ANDREOLI: Good afternoon, Your Honor. So
4 this is just another issue that we just think we haven't
5 made enough progress on in the last three weeks. So the
6 last time we were here, QVT agreed to target its searches to
7 find documents, communications relating to the work that
8 Duff & Phelps did to independently value the Lehman claims
9 in QVT's portfolio.

10 So 11 days after we appear, QVT proposed search
11 terms. We gave them some feedback. We exchanged letters
12 this week. But basically, the documents that were collected
13 have not -- the process of processing them and searching
14 them has not been completed.

15 So we still don't have our -- a hit report. We
16 still don't know the volume of documents that are going to
17 need to be reviewed. We still don't have agreement on
18 whether QVT's going to actually review all those documents
19 or whether we're going to have to negotiate further on
20 search terms.

21 So it's just another issue, where you know, it's
22 been three weeks, we'd really like to move the process
23 forward. And when Mr. Tracey says that, you know, they've
24 completed all these order roles and everything's going to be
25 done this week, this is one where we can't envision a

1 scenario where this isn't going to be -- where this is going
2 to be completed in the next two to three weeks.

3 THE COURT: So Mr. Tracey, you say that you
4 thought last night you thought the hit report would be ready
5 this morning.

6 MR. TRACEY: Yes.

7 THE COURT: And it is?

8 MR. TRACEY: We did get one, yes.

9 THE COURT: Okay. So has that been shared with
10 these --

11 MR. TRACEY: We just got it by email, actually,
12 after our call, (indiscernible).

13 THE COURT: Okay.

14 MR. TRACEY: So we haven't been able to do that.
15 I think -- can you just mention quickly what they said?

16 MR. ANDREOLI: Yes.

17 THE COURT: Sure.

18 MR. TRACEY: Your Honor, if that's...

19 THE COURT: Great.

20 MR. TRACEY: We think it's manageable. We
21 (indiscernible), but we can agree to the search terms that
22 they propose, and we can review the documents. And it's
23 around -- it's going to be under 40,000 documents, we think.
24 And it may be less if we can (indiscernible) against
25 previously produced and reviewed documents. So it should be

1 manageable, we don't think that's disputed.

2 THE COURT: Okay. So is the protocol to share the
3 hit report or just to tell them the number? How have you
4 typically been doing it?

5 MR. ANDREOLI: I mean, in the past, we have not
6 shared hit reports. We didn't share hit reports back in
7 September, just due to the volume.

8 THE COURT: Okay, all right.

9 MR. ANDREOLI: However, it's (indiscernible) --

10 THE COURT: So it's just a kind of a qualitative -
11 -

12 MR. ANDREOLI: Well, I think at this stage, just
13 given the problems that we've had, we'd like to see the hit
14 report.

15 MR. TRACEY: I'm happy to --

16 THE COURT: Okay. All right.

17 MR. LEWIS: Your Honor, one thing that we didn't
18 discuss previously --

19 THE COURT: So you think you're going to -- when
20 you de-dupe, it's going to be substantially lower than the
21 40,000?

22 MR. LEWIS: We hope so, yeah. I certainly hope
23 so. We're going to bring in an additional piece of data
24 we're going to (indiscernible) you. And then, we just have
25 to tweak the date range of the hit report that Mr. Andreoli

1 and I discussed earlier today. So --

2 THE COURT: Okay.

3 MR. LEWIS: -- you won't get the hit report today,
4 but as soon as the final thing is ready, I'll give it to you
5 and we'll start preparing those documents.

6 MR. TRACEY: We'll look at it as soon as we get
7 it.

8 THE COURT: Okay. Okay. Sounds good. All right.
9 The next one on the letter is investor community --

10 MS. SAWYER: Side pocket.

11 THE COURT: Side pocket investor communications
12 issues.

13 MS. SAWYER: So we learned for the first time in
14 the letter to Your Honor that they had collected these
15 documents. They had these documents ready to review, and
16 that the volume of the documents was about 8,000 documents.
17 So that's fine, and we're glad that that's moving forward
18 and we're glad we have that information.

19 Our concern with this is about their provision
20 about redacting investor names. And we've discussed the
21 redactions of investor names. We don't fundamentally have
22 an objection to that. What we have a concern about is that
23 QVT has historically been very aggressive in its redactions
24 that they have taken.

25 And so, we're concerned about what the means, that

1 they're going to be redacting investor names. I mean, the
2 last conference, we talked about the organizational chart
3 that was redacted extensively. Since then, we've gotten
4 transfer documents regarding these transfers of interest
5 that are literally or completely redacted for pages upon
6 pages.

7 And then, there'll be just one entry that makes no
8 sense because everything else has been redacted. And so, it
9 seems to me they're going well beyond just the redaction of
10 investor names. Mr. Tracey assured me this morning on our
11 meet and confer that they would be much more limited in
12 their redactions, that they would focus on investor names.

13 He also represented to me that they were going to
14 be reproducing the transfer documents they recently produced
15 that were almost entirely redacted to limit down those
16 redactions. So I think we've resolved this issue and have a
17 plan going forward, but I just wanted to make sure that the
18 Court understood that we had this concern and we had this
19 discussion and we have this agreement.

20 THE COURT: Okay.

21 MR. TRACEY: That's all accurate.

22 THE COURT: Okay. All right.

23 MS. SAWYER: The next topic on our letter is audit
24 at QVT.com. And the corresponding concern we have about
25 some missing documents from QVT's files. So they had

1 represented prior to the last conference with the Court that
2 audit at QVT.com. So we didn't even talk about that at the
3 last conference, because we thought that those were in the
4 works of being produced.

5 So this one is one we've waited on even longer
6 than the ones from the conference, but we're glad that we're
7 going to be getting the documents. And hopefully, those
8 documents will be produced in the next several weeks, based
9 upon what QVT told me this morning.

10 THE COURT: Okay.

11 MS. SAWYER: In connection with the deleted
12 documents, as indicated in Mr. Tracey's letter, he believes
13 that some documents may have been deleted in the ordinary
14 course in 2009. I mean, I think it's hard to say the
15 documents related to Lehman in 2009 should be deleted in the
16 ordinary course, particularly in the fact that QVT's been
17 asserting work product over its communications going back to
18 mid-2008.

19 So it seems like there's an inconsistency to
20 suggest that it's appropriate for documents to be deleted in
21 2009, related to Lehman, yet are -- is asserting work
22 product over those. We discussed that. Mr. Tracey and I
23 discussed that this morning.

24 We've asked for information related to their
25 litigation (indiscernible) and the process about the timing

1 of which when that litigation (indiscernible) was put into
2 place. But we have concerns about this, as we talked about
3 at the April 8th conference.

4 There are lots of documents that we see in other
5 matters, that we would expect to see here, that we don't
6 have. And they haven't been able to find. And so we have,
7 you know, it's not just the fact there are four documents
8 that they can't find from Mr. Collins, we think that there's
9 potentially a larger issue here, because we're just not
10 seeing the documents that you would normally expect to see a
11 counterparty have, talking about a claim and the preparation
12 of a claim.

13 And so, you know, he's agreed to give us that
14 information. I think we'll take it from there. But again,
15 I wanted to update the Court on our discussions and where we
16 were.

17 THE COURT: So this is the issue of it's a small
18 shop, there are a few people.

19 MR. TRACEY: Right.

20 THE COURT: And it's -- it sounds (indiscernible)
21 that there weren't a lot of documents, but that's just the
22 way that it was.

23 MR. TRACEY: Well, but they (indiscernible)
24 calculation, as you'll hear when we have our trial, they
25 came into the office on a -- two Saturdays into Sundays in

1 September and October. And they did basically all of the
2 work on those two weekend days, sitting together on a
3 trading floor.

4 So there just wasn't any opportunity to send a lot
5 of emails back and forth because they were talking. Nobody
6 sent a confirm email when you're talking to your partner on
7 the trading floor. So I don't think it's very surprising
8 that there aren't a lot of documents around it. And I
9 really don't want to get into the situation where we're
10 making claims of deletion of documents, where there's
11 absolutely no evidence of it.

12 Now there is evidence that Mr. Collins, a year
13 later, or six months later, in early 2009, when he was doing
14 his audit work with his auditor, deleted some of his emails,
15 each one of those was actually, we believe, copied to a
16 specific email or audit email folder, (indiscernible) that
17 QVT.com.

18 And we've found most of them in there. We're
19 looking for the rest because that's one the -- one of these
20 sets of documents that is not (indiscernible) yet. But we
21 don't believe that we've lost any documents in that context.
22 But in the context of this overall case, which goes over a
23 nine-year period, when there have been third party subpoenas
24 of all the people that QVT talked to, as third parties, that
25 there's only two or three documents that they can identify

1 as different from the third parties to ours, I think is
2 remarkable.

3 So the -- I don't think we have a document
4 deletion issue here, and I don't want to get in a situation
5 where we're making speculative statements about that, and
6 trying to make that come true.

7 MS. SAWYER: I mean, in fairness, though, the
8 third party productions have been very small, are still
9 coming in. And so, I don't think we can draw any
10 conclusions that we are missing just these four documents.
11 I mean, we have many third party subpoena (indiscernible)
12 standing, but we don't have documents produced.

13 THE COURT: Well, look, I mean, if everything --
14 if something comes in and you know, you're missing 1,000
15 documents, then we'll have something (indiscernible). But I
16 think that right now, we're in the realm of, you know, it is
17 where it is, and there's no other indication that something
18 untoward happened. And I won't go beyond that and
19 characterize what I think this case is really going to be
20 about, but --

21 MS. SAWYER: And then, for example, we -- they
22 have been unable to find any market quotation solicitations
23 for one category of trades, just unable to find them.

24 MR. TRACEY: Well, probably didn't send it.

25 MS. SAWYER: Okay.

1 THE COURT: Okay.

2 MS. SAWYER: I mean, if -- again, we've been
3 asking if that's the case, but they didn't send them or if
4 they're still looking for them.

5 THE COURT: Okay. But that -- those are the types
6 of issues we're going to have at the trial about, so if in
7 fact they didn't send them and you're going to tell me what
8 the consequence of that is, and that's why we're going to
9 have the trial. So, right?

10 MR. TRACEY: Right, (indiscernible). It's a very
11 (indiscernible).

12 THE COURT: Okay.

13 MS. SAWYER: So that -- I think that completes my
14 --

15 THE COURT: Right, but the concern that I have,
16 Ms. Sawyer, is that you closed by saying, "These are but a
17 few examples of the issues we continue to have with QVT."

18 MS. SAWYER: Sure.

19 THE COURT: So we're all here.

20 MS. SAWYER: Yup. I have additional issues.

21 THE COURT: Okay. So what are the additional
22 issues?

23 MS. SAWYER: So I think now going to my April 26th
24 letter --

25 THE COURT: Right.

1 MS. SAWYER: -- might be the best way to work
2 through those issues. So I think again, I said we weren't
3 going to cover all the issues.

4 THE COURT: Right.

5 MS. SAWYER: So I think the first issue arises
6 with number three in my April 26th letter, which relates to
7 four documents. You might recall at the April 8th
8 conference, they had indicated that they had been
9 withholding draft board materials.

10 THE COURT: Right.

11 MS. SAWYER: And they agreed to produce those
12 draft board materials. And we had -- and they said they
13 were going to make redactions in them. And we said, "Okay,
14 we need to know what these address -- redactions are for.
15 Are they for privilege or are they for something else?"

16 The way the documents have been produced to us,
17 they said they'd stamp it to make it clear what the purpose
18 of the redaction was. The way documents have been produced
19 to us, they say, "Redacted, privileged/non-responsive."
20 Well, that doesn't give me any more information than just
21 covering it up and saying, "Redacted." I don't know if
22 they're -- I don't know why non-responsive information's
23 being redacted from the board materials.

24 But setting that aside, you know, we're having,
25 again, large sections of these being redacted. We don't

1 know the basis of the redaction, whether it's a privileged
2 assertion or whether it's something else. And so, it's --
3 that's where we are.

4 I would hope that they can be more specific, as to
5 why they're redacting. I would hope maybe as part of the
6 process of looking back at the other redactions, which seem
7 to be aggressive, that maybe these are also in that vein of
8 aggressive redactions. It's unclear to us exactly what's
9 going on.

10 THE COURT: Okay, so let's find out.

11 MR. LEWIS: (indiscernible) easy information
12 (indiscernible) three different types of redactions.
13 There's redacted privilege, which is it's responsive
14 information on these claims, but it's a privileged portion
15 of the document.

16 There's redacted nonresponsive, which is just
17 nothing to do with these claims. But where you've got legal
18 advice on a non-responsive topic. So they've got in their
19 four documents, "Well, external counsel said this," but
20 nothing to do with (indiscernible) claims, but something
21 completely different. There we said, "Well, it's
22 nonresponsive, but it's also privileged." So to avoid
23 producing privileged information, only that category gets a
24 redacted, non-responsive/privileged to indicate that it's
25 not relevant, but it is also privileged.

1 THE COURT: That's what I assumed. So --

2 MS. SAWYER: It seems to me that everything's in
3 that last category. I mean, we can go back through and
4 look, but we're not seeing -- I mean, I guess to me, if it
5 was nonresponsive, why even say anything more than
6 nonresponsive?

7 THE COURT: Well, because I think that's it's --
8 they're using belt and suspenders to make sure that there's
9 no privileged waiver with respect to the nonresponsive
10 material. That is in fact subject to another privilege. So
11 that doesn't --

12 MS. SAWYER: So our review of them seems to be
13 that everything's in that third category. And so, we'll
14 take Mr. Lewis' representation that that's what that means,
15 that it has nothing to do with Lehman at all, and that
16 they're privileged, so that no information, further
17 information needs to be given.

18 MR. LEWIS: Your Honor, if the statement is that
19 every single redaction (indiscernible) electronically --

20 THE COURT: Okay.

21 MR. LEWIS: -- if the statement is that every
22 single redaction --

23 THE COURT: She said the large -- that seems to be
24 the lion's share of them.

25 MR. LEWIS: The (indiscernible) -- but I don't

1 think that's correct, but if you want to give us Bates
2 numbers, we'll be happy to look into it, but that was the
3 basis for the redactions.

4 MS. SAWYER: Okay. I mean, we -- it's hard when -
5 - it's hard when they're all that way to know what Bates
6 number to pick. But I mean, we can consider it, but I mean,
7 I think we'll have to take the representation that they were
8 careful and that's the majority fell into that area.

9 THE COURT: I mean, look. You know --

10 MS. SAWYER: I don't know what else to do.

11 THE COURT: I'm willing to accept the
12 representation, what I've done in other cases, when there
13 have been concerns about the integrity of the redactions, I
14 have agreed to review in camera, you know, a sampling. And
15 I'm happy to do that.

16 MS. SAWYER: Okay.

17 THE COURT: I mean, if you want to pick a --
18 either a random sampling of redacted documents or ones that
19 particularly trouble you because of the timeframe --

20 MS. SAWYER: Sure.

21 THE COURT: -- or other circumstances, then
22 identify them to Mr. Tracey, send me a binder that has the
23 redacted and the non-redacted, and I'll look at them.

24 MS. SAWYER: Okay.

25 THE COURT: And if that makes you feel better, I'm

1 happy to do it.

2 MS. SAWYER: All right.

3 THE COURT: That's what I've done in other
4 instances, and you know, I can't tell you that there's a
5 particular way it comes out. Sometimes, they all don't get
6 produced, and sometimes some get produced and sometimes,
7 none additional get produced.

8 MS. SAWYER: Right.

9 THE COURT: So I'm happy to do that for you, if
10 you'd like.

11 MS. SAWYER: We appreciate that.

12 THE COURT: Okay?

13 MS. SAWYER: We'll look at the documents more
14 closely and see if we want to do that.

15 THE COURT: Mr. Tracey, is -- would that be all
16 right with you?

17 MR. TRACEY: Sure, of course.

18 MS. SAWYER: Okay.

19 THE COURT: Okay. Okay?

20 MS. SAWYER: Then we have some additional issues
21 in category number four, which is side pocket, which is a
22 very broad category. The first issue is, is that we have
23 been asking for a long time to get the NAV of each side
24 pocket transfer, and the NAV -- so the amount being
25 transferred.

1 THE COURT: Right.

2 MS. SAWYER: And the NAV of the side pocket at the
3 time that transfer occurred.

4 THE COURT: Right.

5 MS. SAWYER: And we have gotten a spreadsheet that
6 contains information related to that, but it doesn't contain
7 that information. And so, we've asked for that, and we
8 still have not gotten that. And I don't know if it's an
9 objection to it or where we are.

10 MR. TRACEY: No, I have no objection to it. It --
11 on these issues, we've been (indiscernible) passing
12 (indiscernible) a little bit, because we did provide and at
13 the October conference, we agreed to provide certain
14 specific data --

15 THE COURT: Yeah.

16 MR. TRACEY: -- relating to the transfers.

17 THE COURT: Right.

18 MR. TRACEY: And it was specifically identified.
19 And (indiscernible) things was the total amount of NAV that
20 was transferred.

21 THE COURT: Yeah.

22 MR. TRACEY: And the percentage that that bore to
23 the total.

24 THE COURT: To the -- that's right. I remember
25 that.

1 MR. TRACEY: So all you have to do is multiply
2 that number by the percentage, and you (indiscernible).

3 THE COURT: To get the net total.

4 MR. TRACEY: So I thought they had all this, but
5 if they want it in a spreadsheet, where we actually multiply
6 it on behalf of them, I'm happy to do it.

7 MS. SAWYER: I mean, I'm not going to characterize
8 it. I don't think we have the information, so I think if
9 you could give us the information --

10 MR. TRACEY: Sure.

11 MS. SAWYER: -- about the NAV, the (indiscernible)
12 --

13 THE COURT: Okay.

14 MS. SAWYER: -- that would be great.

15 THE COURT: Okay. Okay.

16 MS. SAWYER: Also related to kind of NAV issues,
17 is we had been also seeking the NAV of the main fund, prior
18 to the transactions being moved out into the side pocket.

19 THE COURT: Right.

20 MS. SAWYER: And then, the NAV of the main fund,
21 after that transaction occurred.

22 THE COURT: Right.

23 MS. SAWYER: Mr. Tracey and I discussed that issue
24 this morning. We understood how we were two ships passing
25 in the night, and I think we have an agreement that Mr.

1 Tracey will be producing an estimated NAV, or whatever QVT
2 did, because the official NAV was only done at the end of
3 the month. And so, seeking this daily NAV, I think was a
4 miscommunication issue. So I think Mr. Tracey's committed
5 to produce that information to us.

6 THE COURT: Okay.

7 MR. TRACEY: And that's accurate.

8 THE COURT: Okay. Great.

9 MS. SAWYER: We also had a call with Mr. Julian
10 Sale, which we discussed at the last conference, because we
11 were concerned we were missing certain side pocket
12 documents. And they said the best thing to do is you talk
13 to him. We had a very useful call with Mr. Sale, I think a
14 week ago, and he spent a lot of time going over things with
15 us.

16 But the upshot of that call is Mr. Sale confirmed
17 that we in fact did not have the documents showing the side
18 pocket of the NAV. We had documents that we assumed showed
19 the side pocket of the NAV, but when he looked at the
20 document, he said, "Oh no, that's not the right document."

21 THE COURT: The NAV of the side pocket.

22 MS. SAWYER: The NAV of the side pocket. He said,
23 "Oh no, that's not the right documents, it's a different
24 document that you would need to look at to show you the side
25 pocket of the NAV for every month." And the --

1 THE COURT: The NAV of the side pocket?

2 MS. SAWYER: The NAV of the side pocket, yes.

3 THE COURT: You keep saying side pocket of the
4 NAV. That's okay. Just --

5 MS. SAWYER: Okay, I apologize. I don't even know
6 I'm doing it, so I, I'll have to like, really slow down.

7 THE COURT: It shows that she's been working too
8 hard.

9 MS. SAWYER: So he indicated that there was --

10 MR. TRACEY: She loves her work though.

11 THE COURT: I do, you just keep believing that.

12 MS. SAWYER: So he indicated that we didn't have
13 the right document to show the NAV --

14 THE COURT: But didn't the item that you agreed on
15 two items ago, doesn't that give you this, the NAV of the
16 side pocket?

17 MS. SAWYER: The -- it's two different things.

18 THE COURT: Okay.

19 MS. SAWYER: So the item we were talking about a
20 few moments ago was the NAV of the transfer of the side
21 pocket interests that were transferred.

22 THE COURT: Right.

23 MS. SAWYER: And the NAV of the side pocket at the
24 time of those transfers.

25 THE COURT: Right.

1 MS. SAWYER: This is looking for the month-end
2 official side pocket NAV from QVT's fund administrator.

3 THE COURT: Okay.

4 MS. SAWYER: So slightly different things, because
5 the transfer might not happen at the end of the month, when
6 the official side pocket NAV --

7 THE COURT: Okay.

8 MS. SAWYER: -- is created. So we learned that we
9 didn't have these documents. Mr. Sale is going to look into
10 what the right document is to be produced to us. We also
11 walked through what we had deduced was the analysis of
12 getting to the side pocket NAV, you know, looking at the
13 steps along the way.

14 And we realized that we did not have all of those
15 documents, either. And Mr. Sale was going to investigate to
16 try to identify the correct documents we should be looking
17 at to get from the Lehman claim amount to the side pocket
18 NAV amount every month. And so, we've -- he's investigating
19 and we're on our way with that, but that is still an
20 outstanding issue.

21 MR. TRACEY: Yeah, it was a good call because we
22 all learned something. We produced, as the NAV, something
23 called a portfolio report, which is (indiscernible) to all
24 investors (indiscernible).

25 THE COURT: Right. I remember that.

1 MR. TRACEY: And it has the NAV (indiscernible).

2 Well, it turns out that there are two NAVs, all right?

3 There's the NAV that goes to the investors in that report,
4 and then there is a separate NAV that's calculated by CITCO,
5 the fund administrator, which starts with that number, but
6 deducts fees, expenses --

7 THE COURT: The net NAV.

8 MR. TRACEY: -- and (indiscernible). The net NAV,
9 right. So we -- none of us do that, anybody in this room.
10 So he has now gone back and he is going to get the net NAV
11 for each month. The -- those documents, there's a NAV for
12 the S25 in a huge spreadsheet each month. So what he's
13 going to do is take out that NAV for each month, put it in
14 the spreadsheet, and then he's going to, you know, he'll
15 give an affidavit or whatever (indiscernible).

16 THE COURT: At the risk of creating trouble,
17 causing trouble, why is the net NAV more relevant than the
18 gross NAV?

19 MR. TRACEY: He liked that number better. Because
20 it's --

21 MS. SAWYER: He definitely reacted to it on the
22 call. Like he said, "Oh no, that's not the right one. We -
23 - you should use this other one."

24 MR. TRACEY: The net NAV is actually what's in --
25 it's the average of everything that's in everybody's account

1 at the end of the month. The gross NAV is before you take
2 out all those expenses. So it's just the NAV of the
3 investments. So we --

4 THE COURT: But if you're trying to tie it back to
5 --

6 MR. TRACEY: I think the first one. I think the
7 gross --

8 THE COURT: The gross NAV --

9 MR. TRACEY: -- NAV is not important to them, but
10 they'll have both.

11 MS. SAWYER: We'll have both.

12 THE COURT: Okay. I mean, just based on what you
13 said, it seems to me that the gross NAV is more relevant to
14 the issue that's -- that we have teed up here, but I'll
15 leave it at that. I'm sure you'll figure it out, once you
16 get it. So --

17 MR. TRACEY: Well, we'll give them a net NAV for
18 each month.

19 THE COURT: Okay.

20 MR. TRACEY: And he's going to put together a set
21 of documents for one month that shows how you get from the
22 net to the gross.

23 THE COURT: Wonderful. Okay.

24 MS. SAWYER: And then, I think then, we talked
25 about we were going to go over those, or is that not true?

1 MR. TRACEY: We were going to what?

2 MS. SAWYER: We were going to have a further call
3 with Mr. Sale.

4 MR. TRACEY: Yeah.

5 MS. SAWYER: Yes. Okay, just to make sure.

6 THE COURT: That's great. Okay.

7 MS. SAWYER: I think the -- I think that we can
8 skip a number of these --

9 THE COURT: Okay.

10 MS. SAWYER: -- because we understand that they're
11 in progress. We under -- we've talked about some of them
12 this morning. And we are hopeful that we are going to be
13 moving forward expeditiously on those. I think the next one
14 I wanted to talk about was the (indiscernible) database, and
15 which is number 10.

16 THE COURT: Okay.

17 MS. SAWYER: And the (indiscernible) database, we
18 -- you might recall is there -- where they keep their marks
19 in that we learned from Mr. (indiscernible) at the last
20 conference, that there is some commentary about those marks,
21 month-end. And QVT has committed to produce that
22 commentary, but they have indicated that they're going to
23 produce responsive, non-privileged commentary.

24 And so, I'm unsure what responsiveness review is
25 happening and how it's happening. I'm also concerned about

1 what might be privileged. Like I can't quite imagine what
2 would be privileged in this commentary in a marks database.
3 So those were the issues I had about the representation.

4 And you know, I know I sound a little bit hyper
5 technical, but we have had so much history here, that like,
6 I want to just make sure we're crystal clear on what's
7 happening before we get a production that doesn't make any
8 sense to us.

9 THE COURT: Okay.

10 MR. BECK: Your Honor, John Beck. So that's just
11 sort of standard disclaimer language that when we commit to
12 do something, we would obviously not produced anything
13 that's privileged.

14 THE COURT: Sure.

15 MR. BECK: We have collected those documents.
16 There's about 8,500. We have already run privileged
17 searches on them. There is nothing that we suspect
18 privilege on and (indiscernible) significant.

19 MS. SAWYER: How much was the volume? I just

20 THE COURT: 8,500.

21 MR. BECK: 8,500.

22 MS. SAWYER: Okay, all right. Great.

23 THE COURT: Great. Okay. You did the B quotes.

24 MS. SAWYER: B quotes, we did. Deletions, we
25 talked about. So I think the next one is Lehman at QVT.com.

1 And here, at Lehman at QVT.com, you know, this -- we talked
2 about the April 8th conference. This was an email box that
3 was created to collect information about the Lehman claims,
4 process, the close-out, the market quotation process, et
5 cetera.

6 We believe that because of the nature of this
7 email box, which is they represent a very small 92 documents
8 at the last conference, we believe all of the documents in
9 that email box should be produced or logged. We don't see
10 any reason that there should be some sort of responsiveness
11 analysis done of these.

12 And so, we've asked all -- have all the documents
13 in Lehman at QVT.com either been produced or logged? And
14 the response we got is, "We produced all the responsive
15 documents." To be honest, I want to know how that breaks
16 down, because I can't imagine what would be in this mailbox
17 that relates to the calculation of the Lehman claim that
18 wouldn't be responsive and shouldn't be produced.

19 So we didn't want search terms applied to it.
20 It's a small number of documents, and we think that they all
21 should just be produced.

22 MR. LEWIS: Your Honor, that's happened. You
23 know, Lehman, at QVT.com, we went over. We looked at every
24 single document we collected from that repository. And
25 we've produced the (indiscernible).

1 THE COURT: Well, but that's the question. What
2 is -- if this repository is designed -- is defined
3 accurately as a repository for information related to QVT's
4 claims against Lehman, then what is in there that doesn't
5 fit that description?

6 MR. LEWIS: Okay.

7 THE COURT: Unless it's a repository for all
8 things Lehman, including, you know, commentary about, you
9 know, what a travesty the Lehman bankruptcy is, or something
10 like that.

11 MR. LEWIS: Well, QVT and Lehman have a number of
12 different relationships. Lehman was LBI's and
13 (indiscernible) one of QVT's primary brokers.

14 THE COURT: Yeah.

15 MR. LEWIS: And we had a relationship with
16 (indiscernible) as well. So to the extent of their emails,
17 and we can go back and check, but to the extent their
18 email's in relation to QVT's (indiscernible) claims, LBI
19 claims, those wouldn't be responsive for this.

20 THE COURT: Okay. Then it's a ships passing in
21 the night problem, because the way this is described by Ms.
22 Sawyer is that it's a repository -- well, if it's a
23 repository only for information relating to the claims
24 calculation, then that's an inaccurate description of the
25 repository.

1 If it's a repository for anything relating to
2 Lehman, and there are (indiscernible) documents and LBI
3 documents in there, then those are nonresponsive.

4 MS. SAWYER: Okay, but we --

5 THE COURT: Okay?

6 MS. SAWYER: We haven't been told that. That's
7 what -- we're just trying to figure -- I'm trying to figure
8 out like --

9 THE COURT: Okay.

10 MS. SAWYER: I've been asking, haven't gotten all
11 of the documents. What else I -- what is this, you know?
12 And none of that information is being communicated.

13 THE COURT: Okay. So --

14 MS. SAWYER: I mean, I feel like Mr. Lewis said,
15 "I think it is," but again, we've been asking for months and
16 months, "What is it? How many documents are in it? How
17 many have you produced? And why haven't you produced them
18 all, if you haven't produced them all?"

19 MR. LEWIS: I think the question's been asked and
20 answered many times. To the extent you want us to go back
21 and look (indiscernible) --

22 THE COURT: Okay, so Ms. Sawyer says, "We have
23 found 126 documents" --

24 MS. SAWYER: Well, that's a -- that was like, my
25 second issue is, they told us there were only 92 and we

1 found 126 that are produced to us, so again, we feel like
2 we're -- we don't know what's going on. We feel like we're
3 not getting accurate information. And this is obviously a
4 very important source of information.

5 MR. LEWIS: So I think that the -- to the extent
6 there is a disparity of numbers, when emails or documents
7 are brought into our review databanks from multiple sources.
8 So if the three of us were on an email together, if Dennis
9 was the lead custodian for de-duplication processes, it
10 would look like you didn't have that email from me for
11 (indiscernible).

12 So to the extent I think a lot of these emails
13 (indiscernible) QVT are gone, we've also had additional QVT
14 custodians on the same communication. The de-duplication
15 would affect those numbers. And I think that may be a cause
16 for concern.

17 THE COURT: A discrepancy?

18 MS. SAWYER: Well, and then I go back to my
19 fundamental question. They can tell me, without de-duping,
20 how many documents are in Lehman and QVT.com. And so, if
21 it's 92 documents after they've done some de-duping process,
22 that's not the question I've ever asked.

23 The question I want to know is how many documents
24 are in Lehman at QVT.com, how many of those documents have
25 been produced, and logged, and how many -- and what, what's

1 the rest?

2 MR. LEWIS: And the answer to that is, when we
3 collect them from Lehman and QVT.com, we collected 93
4 documents. What I need to go and check is to the extent
5 there's an email with multiple attachments, that would be
6 collected as one file. But when you split it out, it may
7 end up being five different documents. So that may be why
8 you get from 93 up to 126. But I checked again this week
9 with our client, and there were 93 documents and they were
10 collected by the (indiscernible).

11 MS. SAWYER: Okay. I mean, I'm not sure -- I
12 don't even know what to say because I feel like the de-
13 duplication issue would -- doesn't address the fact that we
14 think there are more. And I feel like -- (indiscernible) --

15 THE COURT: So let's go with --

16 MS. SAWYER: -- I don't know what else to ask.

17 THE COURT: Okay. So let's go with you -- your
18 concern that there are more. If QVT tells you that there
19 are 500 documents in Lehman@QVT.com, and then they tell you
20 that 404 of them are not responsive because they relate to
21 LBIE or LBI, would that satisfy your concerns? I'm -- I --

22 MS. SAWYER: And I think, to be honest, I don't
23 know why we just don't see -- I mean, we feel like this is a
24 very important custodian database information. So I don't
25 understand why we just don't give us the LBIE documents to

1 just -- I mean, we're -- it -- I know it has nothing -- no
2 relevance, but like, I don't understand why we're drawing
3 that line, given the fact that we believe this is where the
4 information went, and we don't have all of the information
5 about market quotes and things like that. So I understand.

6 THE COURT: But how many documents total are there
7 in Lehman at QVT.com?

8 MR. LEWIS: We collected 93.

9 THE COURT: So there are -- that -- but now I'm
10 lost. Because if you collected 93, and some of them relate
11 to LBIE and LBI, then you produced -- you didn't produce
12 those or you produced those with a redaction? I'm genuinely
13 confused.

14 MR. LEWIS: Yeah, I mean, maybe it'd be helpful if
15 we go back and we just do the numbers, we said, "Here are
16 the total numbers of emails or messages in Lehman at
17 QVT.com," and we'll look at the original 93, and we'll also
18 run a search for Lehman at QVT.com across our databases.
19 And we say of, you know, it --

20 THE COURT: What's the difference between those
21 two things? That's the part I don't understand. Aren't --

22 MR. LEWIS: So it's just a --

23 THE COURT: It would be --

24 MR. LEWIS: -- a safeguard to see if, for some
25 reason, there are additional documents in the database, the

1 (indiscernible) email was sent to a QTV custodian and Lehman
2 at QVT.com. If you ran that search, (indiscernible) to make
3 sure you get everything.

4 THE COURT: I see.

5 MR. LEWIS: But we could do the numbers on that.
6 We could provide you with a (indiscernible).

7 THE COURT: Do you understand that point?

8 MS. SAWYER: No, to be honest.

9 THE COURT: I understood it to mean that if you
10 query QVT -- if you query Lehman at QVT.com, and you get 90
11 documents, but then, if you also do a broader query, and the
12 query is to Julian Sale, CC Lehman at QVT.com, and you get a
13 hit, you might get that document, when you didn't get it by
14 querying Lehman at QVT.com, for reasons that nobody could
15 know. Do you know --

16 MS. SAWYER: But I feel like, I kind of wish --

17 THE COURT: I just made that up.

18 MS. SAWYER: I under -- I think we should step
19 back. Like, the mailbox still exists, Lehman at QVT.com.
20 We should, regardless of what's been collected or de-dupd or
21 whatever, we should look at that mailbox and see how many
22 emails are in that mailbox. That would have the two emails
23 and the CC emails in that mailbox.

24 THE COURT: But that's contrary to what was just
25 said.

1 MS. SAWYER: Well, that's what I don't understand
2 why we don't (indiscernible) them.

3 THE COURT: We're going to keep at it, until we
4 get -- I mean, this is not a refusal to cooperate. This, I
5 think, is a communication problem. So let's -- Mr. Tracey's
6 going to try it.

7 MR. TRACEY: Let me try and -- Mr. Lewis can
8 correct me if I get it wrong. When we load things into our
9 review database, to do our searches and to determine which
10 ones are relevant and which ones aren't to produce, it's a
11 smaller number than was in the original email box, if you
12 looked on a computer, because it gets de-dupd down.

13 THE COURT: Okay.

14 MS. SAWYER: But you can go back to the original.

15 MR. TRACEY: So let me finish.

16 MS. SAWYER: Sorry.

17 MR. TRACEY: So I'm --

18 THE COURT: So there's way too many of you
19 standing.

20 MR. LEWIS: (indiscernible).

21 MR. BECK: I'm sorry.

22 MR. TRACEY: So are we together so far?

23 MS. SAWYER: Yes.

24 MR. TRACEY: Because -- yeah, because it takes out
25 any that are multiples.

1 MS. SAWYER: Sure.

2 THE COURT: Okay.

3 MR. TRACEY: And so we don't have to review it
4 multiple times.

5 THE COURT: Right.

6 MR. TRACEY: And that's, you know, just standard
7 procedure. So if there are 93 in our review database, we --
8 we're pretty sure that there were more than 93 emails in
9 that mailbox --

10 THE COURT: Right.

11 MR. TRACEY: -- because there -- it was de-dupd
12 out.

13 THE COURT: De-dupd, right.

14 MR. TRACEY: So what -- I think what Lauri is
15 suggesting is we should go back to the original computer,
16 forget about review database, and find out how many emails
17 are in that mailbox.

18 THE COURT: Mailbox.

19 MR. TRACEY: And then figure out how many got
20 pulled out because of de-duping, and how many got produced.
21 And I'm happy to do that. I mean, this is really
22 (indiscernible) for I think nothing, but I'm happy to do it,
23 if that -- I mean, we can do that, right?

24 MR. LEWIS: Yeah, yup.

25 MR. TRACEY: Okay. We can do that.

1 THE COURT: Okay, but now, so we start with 126,
2 hypothetically, and we de-dup and then we have 93. And
3 those 93 are produced.

4 MR. TRACEY: They're either produced or they're
5 not responsive because they're LBI, which we're not
6 producing. In anything, we've not produced it.

7 THE COURT: No, I understand that.

8 MR. TRACEY: Yeah.

9 THE COURT: I'm just trying to make the math work.

10 MR. TRACEY: Yeah. So the match is 126 total in
11 the mailbox.

12 THE COURT: Right.

13 MR. TRACEY: And when you de-dup, you get 92, and
14 this is just hypothetical. And then, of those 92, we did a
15 -- we read every single one of them and decided that X
16 number were relevant, say 50, and we produced it. So there
17 are three relevant numbers. The total number in the
18 mailbox, the de-dup number and the number of
19 (indiscernible).

20 MR. BECK: I just want to add, there's also, in
21 addition to duplication, there's a question, so we all
22 (indiscernible) the top email in the chain, and there's all
23 the emails down the line. And so, we only review the top
24 one, and it looks like one email. And then, when we
25 produce, we produced the lower levels also, so the

1 production that goes out is more than what we've reviewed.

2 THE COURT: Mm hmm. Okay.

3 MR. TRACEY: So (indiscernible).

4 THE COURT: All right, so they're telling -- the
5 bottom line is that they're telling you that you're getting
6 every single hit in Lehman at QVT.com that relates to market
7 quotation, and that you're not getting wholly unrelated hits
8 that relate to (indiscernible) or LBI, just as if they were
9 unrelated third parties. So I don't know, again, what more
10 there is that we could do on that, other than my in camera
11 review of them.

12 MS. SAWYER: Okay.

13 THE COURT: And I -- you know, I mean, I think
14 everybody understands why you're so interested in this
15 particular custodian. But I take them at their word.

16 MS. SAWYER: Okay. Well, I think if we get the
17 information, then we could maybe talk about maybe doing some
18 in camera review of some of the withheld documents that
19 aren't -- so we'd need to know how many were produced, how
20 many were logged, and then how many were withheld. And
21 then, it's --

22 THE COURT: But are you -- just as a practical
23 matter, are you producing, to use Mr. Tracey's number, the
24 92 documents, and then documents -- and then 10 of them
25 being -- there -- so there's a date, and a sender. And

1 then, does it say, "Redacted," or are you physically not
2 even producing that page?

3 MR. TRACEY: (indiscernible).

4 THE COURT: The (indiscernible)?

5 MR. TRACEY: No, we don't redact full documents.
6 We just don't (indiscernible).

7 MS. SAWYER: Right. So we don't --

8 THE COURT: Right.

9 MS. SAWYER: -- have any sense of what's been not
10 produced to us.

11 THE COURT: But just by number of (indiscernible),
12 they're going to tell you that.

13 MS. SAWYER: Exactly, exactly.

14 THE COURT: Okay.

15 MR. LEWIS: Your Honor, I just want to --
16 actually, we'll give you the breakdown, and then we can take
17 it from there. Just one thing that occurred to us. I think
18 when we did the re-review of Lehman at QVT.com, there was a
19 date range on that, and it -- the original search terms,
20 which did include Lehman at QVT.com, had kind of tranced
21 date periods.

22 So, which may have been (indiscernible) part of a
23 number discrepancy, maybe because we're -- the re-review
24 period was, I think the three and a half months after Lehman
25 filed. And so, the answer may be that there are documents

1 from a different date range, but we'll give a full breakdown
2 of all of the documents, and we can take it from there.

3 MS. SAWYER: Okay.

4 THE COURT: Okay?

5 MS. SAWYER: That sounds useful. And then, the, I
6 think next issue is you, right? Is Mr. Andreoli has talked
7 about number 14 on my letter.

8 THE COURT: Okay. I'm going to have to --

9 MS. SAWYER: Do you need to break?

10 THE COURT: I'm going to have to ask you to pause.

11 MS. SAWYER: Okay.

12 THE COURT: So do we (indiscernible) a number? So
13 what's going to happen is, apparently, the three o'clock
14 people are just going to be on the telephone magically. And
15 I'm just going to talk to them. So you can stay here and
16 listen or not listen, and then when we're done, we'll just
17 keep going. It shouldn't take very long. Or you can step
18 out, yes, absolutely.

19 MR. LEWIS: (indiscernible).

20 (Break)

21 THE COURT: Okay, Ms. Sawyer?

22 MS. SAWYER: Yes. So going back to my April 26th
23 letter, number 14, the last number in that letter, Mr.

24 Andreoli's going to speak (indiscernible).

25 THE COURT: Okay.

1 MR. ANDREOLI: So last time we were here, Your
2 Honor, we talked about the 418,000 documents that QVT had
3 initially coded as non-responsive. And we discussed that we
4 had asked questions in January concerning whether they had
5 in fact all been reviewed and tagged non-responsive.

6 We were told, leading up to the last conference,
7 that yes, they had been reviewed. And then, QVT had also
8 run some additional search terms on those documents to sort
9 of cross check to make sure that responsive documents are
10 not being withheld, due to human error in the first
11 instance.

12 So we'd asked to see those additional search
13 terms, and they were provided to us this week, but we have
14 some concerns about what was represented to us at that time.
15 So those search terms were provided. And at that time,
16 counsel said, "To the extent that a non-privileged document
17 was marked responsive during an additional review, it has
18 been produced in a supplemental production or will be
19 produced."

20 And that's confusing to us because we had heard
21 from QVT's counsel that that process had been completed
22 before the last conference in March. So we're concerned --
23 is there additional review that's still ongoing with respect
24 to those additional terms?

25 Are they changing responsiveness coding now, based

1 on additional things that are happening? We're just unsure
2 of what is happening with respect to those documents. Is
3 everything -- is that second level of review completed? Or
4 are we still waiting for additional responsive documents
5 (indiscernible).

6 THE COURT: Okay, go ahead.

7 MR. BECK: So, Your Honor, I just want to first
8 sort of go over the process that we did for these documents.
9 We brought all the documents in the database and we did a
10 responsive review, so that means, we had first level
11 reviews. We had other attorney, more senior attorneys do
12 second level reviews.

13 And we did the whole process just like we did with
14 all the other documents. That resulted in a (indiscernible)
15 of approximately 418,000 (indiscernible). In response to
16 their questions, right in January, we started running
17 additional searches and re-reviewing all those searches, and
18 we have done them.

19 This statement, perhaps in (indiscernible), was
20 just trying to reassure them that they are making additional
21 requests in -- that we've been talking about today, and that
22 is in (indiscernible) letter. Any newly produced documents,
23 they have to come out at 418 nonresponsive document. So
24 that was perhaps (indiscernible) again, was just a statement
25 to reassure them that we are producing any new responsive

1 document that we find. That's all it was. It was not
2 intended to (indiscernible) misleading (indiscernible).

3 THE COURT: So you're saying that there are
4 418,000 documents, and that based on one set of requests,
5 everything was produced? But then, there were incremental
6 requests that were then applied to those documents --

7 MR. BECK: Yes.

8 THE COURT: And those are the ones that are still
9 in process?

10 MR. BECK: Well, for instance, so the December
11 2009 portfolio, (indiscernible). One of the supplemental
12 searches that we ran was for (indiscernible). We did not
13 catch that. They specifically requested December 2009
14 report. We did not produce that. That is a document that
15 came out (indiscernible) that (indiscernible).

16 THE COURT: I see.

17 MR. BECK: (indiscernible) produce. That's all
18 the (indiscernible).

19 MR. ANDREOLI: Okay. So I think we're on the same
20 page --

21 THE COURT: Okay.

22 MR. ANDREOLI: -- but just to make sure they
23 provided a list of search terms -- search queries and date
24 ranges on April 26th.

25 THE COURT: 26th.

1 MR. ANDREOLI: And I just want to make sure that
2 all of those search queries done, responsiveness done,
3 documents produced, anything incremental that we asked for
4 or have to ask -- asked for separate from this may still be
5 produced, but these search queries are done.

6 MR. BECK: (indiscernible).

7 THE COURT: Okay. All right. Did you want to
8 talk about the remaining two items in your letter?

9 MS. SAWYER: Yeah, we haven't had an opportunity
10 to meet and confer with QVT on those issues.

11 THE COURT: Okay.

12 MS. SAWYER: I'm hoping to do that very soon. To
13 be honest, the focus of the activity in the last 48 hours
14 has been primarily on the issues --

15 THE COURT: (indiscernible).

16 MS. SAWYER: -- arising out of the last
17 conference. But these are obviously additional issues that
18 we will be exploring with QVT, and hopefully, doing that
19 quite soon.

20 THE COURT: Okay. All right.

21 MS. SAWYER: So you know, I think our perception
22 is, is that as unfortunate as it is, we really need to have
23 a -- some pressure or a court conference to keep us moving
24 forward. And so, I would ask -- and you know, there's many
25 things that we did not discuss today that QVT has

1 represented what we've done early next week.

2 And so, hopefully, that's true. So lots of things
3 we discussed today, that are going to take them some time to
4 collect, review. Their vendor apparently takes a long time
5 to process documents, that process. So there's things I
6 think will not be done early next week and things that will
7 be done in several weeks. And so, it seems to me it makes
8 sense to give us another placeholder, because I don't know
9 how else to move us forward.

10 THE COURT: Well, Mr. Tracey's going to entirely
11 dispute your characterization --

12 MR. TRACEY: No, no.

13 THE COURT: -- (indiscernible) -- no?

14 MR. TRACEY: No. All I was going to say is, the
15 way she's speaking, it sounds like Lauri thinks that I want
16 to come down here, and I (indiscernible).

17 THE COURT: No I was going to say you're going to
18 dispute the characterization that it requires the existence
19 of a court date in order --

20 MR. TRACEY: I don't (indiscernible) --

21 THE COURT: -- for you to do what you promised to
22 do. And I think that you would say that, but I'm happy to
23 give you a date and I'm happy to see you again or not see
24 you again. So what date do you have in mind, Ms. Sawyer?

25 MS. SAWYER: I think maybe three weeks, although I

1 think three weeks from today, we actually have a QVT
2 deposition scheduled, so maybe like, the 19th, which is just
3 shy of three weeks. Is that right?

4 THE COURT: The 19th is a Thursday.

5 MR. TRACEY: I'm going to be --

6 THE COURT: Away?

7 MR. TRACEY: -- in Hong Kong that week, but --

8 THE COURT: Okay.

9 MR. TRACEY: -- I think it would be okay to
10 schedule it and my colleagues can take care of it.

11 THE COURT: Okay.

12 MS. SAWYER: Okay, that's fine, Your Honor.

13 THE COURT: So let me just check, what does it
14 look like?

15 CLERK: (indiscernible).

16 THE COURT: On Thursday the 19th?

17 CLERK: (indiscernible).

18 MR. TRACEY: I wonder if we could schedule it
19 possibly in the morning, so that if I can (indiscernible),
20 and (indiscernible).

21 THE COURT: Sure.

22 MS. SAWYER: That's fine, Your Honor.

23 THE COURT: Okay.

24 MS. SAWYER: (indiscernible)?

25 THE COURT: (indiscernible). Would you be willing

1 to come in at 9:30?

2 MS. SAWYER: That's fine.

3 THE COURT: And that would help you in terms of
4 the time difference.

5 MR. TRACEY: That'd be good.

6 THE COURT: Okay, so 9:30 on the 19th, if
7 necessary.

8 MS. SAWYER: If necessary.

9 THE COURT: Okay, great. Okay, thank you, folks.

10 MS. SAWYER: Thank you.

11 MR. TRACEY: Thanks, Your Honor.

12 THE COURT: Have a good weekend.

13 (Whereupon these proceedings were concluded at
14 3:27 PM)

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C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing
transcript is a true and accurate record of the proceedings.

Sonya Ledanski
Hyde

Digitally signed by Sonya Ledanski Hyde
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